Reciprocity Certification and Discussion

Table of Contents

I. Background on Strategic Energy

Strategic Energy ("Strategic") is an energy supply and management company committed to managing energy purchases for its customers and advising them on energy-related matters. Since its inception in 1986, Strategic has continually developed the technical and market expertise to respond to opportunities for its customers. Strategic has grown from a professional staff of four individuals to one of the largest retail electricity suppliers in the United States with more than 225 full-time energy professionals devoted to electricity and natural gas supply, procurement, management, and consulting.

As is the case with most of the utilities in Illinois, Strategic Energy does not own any generation assets, but instead buys power from wholesale counterparties to serve its customers' load. [redacted] Strategic does not purchase power from any company with which it is affiliated. Strategic is majority owned by Great Plains Energy Incorporated, a regulated Public Utility Holding Company that also owns Kansas City Power and Light Company ("KCP&L").[1]

[1] Great Plains Energy Incorporated also owns Great Plains Power Incorporated ("GPP"). GPP is authorized by the Federal Energy Regulatory Commission ("FERC") to sell power at market-based rates. GPP has no jurisdictional facilities other than its market based-rate tariff. To date GPP has not engaged in any wholesale power sales or purchases.

KCP&L is an integrated, regulated electric utility, which supplies electricity to customers in Missouri and Kansas.

Strategic's customer base encompasses a diverse array of commercial and industrial energy end-users including small businesses, manufacturers, commercial real estate properties, several national franchise chains, and schools. Strategic's school customers include the Association of Educational Service Agencies, the Energy Management Consortium of Pennsylvania, the Sweetwater Union School District in California, the Ohio School Pool, the Michigan Schools Energy Consortium and the Energy For Schools in Texas. Strategic's real time energy management approach has provided school districts across the country with over $100 million dollars in energy supply cost savings. Strategic plans to bring this same focus on developing school programs to the Commonwealth Edison ("ComEd") and Ameren/Illinois Power ("AmerenIP") service territories once it obtains certification as an Alternative Retail Electric Supplier ("ARES").

II. Strategic Energy Satisfies the Reciprocity Requirement

Strategic satisfies the reciprocity requirement set forth in Section 16-115(d)(5) of the Electric Service Customer Choice and Rate Relief Law of 1997, which amended the Illinois Public Utilities Act (the "Act"). 220 ILCS 5/16-115(d)(5).

A. The Reciprocity Provision

The reciprocity provision was drafted as a requirement for non-utility electricity suppliers wishing to gain certification as an ARES to compete in the

Illinois electric market. The reciprocity provisions of Section 16-115 were designed to protect Illinois utilities from unreasonable competition by utilities and their affiliates from outside the State of Illinois. Toward that end, the Act's reciprocity provision states:

> (d) The Commission shall grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified application and such other information as the applicant may submit:
>
> ***
>
> (5) That if the applicant, its corporate affiliates [,] **or the applicant's principal source of electricity (to the extent such source is known at the time of the application)** owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates [,] or **principal source of electricity**, as the case may be, **provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility**, and provided further, that the applicant agrees to certify annually to the Commission that it is continuing to provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirements of this Section. For purposes of this subparagraph, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility system shall not constitute control of access to the provider's transmission and distribution facilities;

Section 16-115(d)(5). (Emphasis supplied.)

The Illinois Appellate Court reviewed the reciprocity provision in 2002 in International Brotherhood of Electrical Workers v. Illinois Commerce Commission, 331 Ill. App. 3d 607, 772 N.E.2d 340, 265 Ill. Dec. 302 (5th Dist. 2002) (hereafter WPS), cert denied, 201 Ill. 2d 572 (IL 2002). In WPS, the Appellate Court concluded that the reciprocity provision was ambiguous, acknowledged that multiple constructions of the statute were reasonable, and turned to legislative history to interpret the statute. Id. However, the Appellate Court did not apply the statute to the facts in WPS but instead remanded the matter to the Commission to proceed with the application of the reciprocity provision.

In giving the Commission guidance on how to interpret this ambiguous statute, the Appellate Court cited the following legislative concern:

> The State has an interest in providing the existing utilities with a reasonable opportunity to obtain a return on certain investments on which they depended in undertaking those commitments in the first instance while, at the same time, not permitting new entrants into the industry to take unreasonable advantage of the investments made by the formerly regulated industry. (Emphasis added.) 220 ILCS 5/15-101A(c) (West 2000).

WPS, 331 Ill. App. 3d at 617. The Court stated that the statute must be interpreted in a manner that does not allow a new entrant into the "Illinois utility market without providing the Illinois utilities affected by the new entrant an opportunity to also compete in the market of the new entrant." Id. According to the Court, such market protection was the purpose behind the "reasonably comparable" standard set forth in Section 16-115(d)(5) that provides the Commission a mechanism to evaluate whether or not a new entrant will be able

to take unreasonable advantage of the investments made by the incumbent utilities.

Importantly, the WPS Court did not analyze the **"principal source of electricity"** phrase in Section 16-115(d)(5), which the Commission has recognized as an alternative manner in which ARES applicants can satisfy the reciprocity provision.[2] Since the WPS opinion, the Illinois Commerce Commission has addressed the "principal source of electricity" aspect of the reciprocity provision and confirmed it is a viable avenue by which a retailer can secure its ARES certification.[3] It is through this avenue that Strategic seeks certification.

B. Analysis of the Reciprocity Requirement with Respect to Strategic Energy

Strategic meets the plain language of the reciprocity requirement. While any application of the reciprocity provision cannot impose requirements beyond those articulated in the language of Section 16-115(d)(5) itself, Commission opinions have articulated a three-pronged analysis by which the reciprocity component of an ARES application may be evaluated. The test provides that:

---

[2] See also June 27, 2003 Staff Report Resulting from Annual Reporting Process to Review Annual Certifications of ARES at 4, n. 2 (acknowledging that as of 2003 "Neither the Appellate Court nor the Commission has applied the phrase 'principal source of electricity' to any applicant for ARES certification.")

[3] See, e.g., Blackhawk Energy Services, L.L.C., 01-0174 (Ill. Commerce Comm'n, Aug. 19, 2003 Order) (granting ARES certification because, among other things, applicant's principal source of electricity is ComEd and Section 16-115(d)(5) of the Act allows an applicant to become certified as an ARES if its principal source of electricity owns and controls transmission or distribution facilities that are open to competition). See also, BlueStar Energy Services, Inc. Application for Certificate of Service Authority under Section 16-115 of the Public Utilities Act, Ill. Commerce Comm'n, Docket No. 04-0485 (Aug. 4, 2004 Order); Lower Electric, LLC Application for Certificate of Authority under Section 16-115 of the Public Utilities Act, Ill. Commerce Comm'n, Docket No. 04-0118 (Aug. 4, 2004 Order).

- the applicant or its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) own or control electric transmission or distribution facilities for public use within a defined geographic area;

- the applicant, its corporate affiliates, or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility; and

- the Applicant certifies that it will remain in compliance.

See BlueStar Energy Services, Inc., Docket No. 04-0485 (Aug. 4, 2004 Order); Lower Electric, Docket No. 04-0118 (Aug. 4, 2004 Order); Nordic Marketing of Illinois, L.L.C., Docket No. 04-0334 (October 6, 2004 Order on Rehearing). As set forth below, Strategic satisfies this test.

1. Strategic's principal source of electricity controls transmission or distribution facilities for public use and provides delivery services to ComEd and AmerenIP.

As a threshold matter, an Applicant may be certificated, even if its principal source of electricity is not known at the time the application is filed. At the time of making the instant filing, Strategic has not yet entered in a power purchase agreement to supply its future customers in Illinois. Section 16-115(d)(5) provides, in relevant part that if "**the applicant's principal source of electricity (to the extent such source is known at the time of the application)** owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will

be offered," then the applicant's principal source of electricity must provide comparable delivery services. 220 ILCS 5/16-115(d)(5) (emphasis added.)

Thus, the language of the reciprocity provision itself confirms that applicants that do not know their principal source of electricity can satisfy the reciprocity provision. Essentially, the Act provides that the Commission is to certificate new entrants to the Illinois market who have no track record that establishes their principal source of electricity, and who have not yet entered into supply agreements (that is, their principal source is not known at the time of the application). It is with this backdrop in mind that the Commission must evaluate Strategic's ability to satisfy the reciprocity provision.

There are three alternative ways to view Strategic's principal source of electricity, all of which satisfy the reciprocity provision. Under each of these three scenarios, Strategic meets the reciprocity requirement. Strategic seeks certification under the first scenario and offers the remaining two scenarios only as last resort alternatives.

First, Strategic satisfies the reciprocity requirement by virtue of the fact that its principal source of electricity for ComEd would be PJM and for AmerenIP it would be MISO. PJM and MISO own or control electric transmission facilities for public use and provide delivery services to ComEd and AmerenIP that are identical to those offered by ComEd and AmerenIP. Second (and alternatively), Strategic satisfies the reciprocity requirement through its wholesale counterparties. If necessary, Strategic would commit to serve its retail load in Illinois with at least 65% of its power purchases from pool of counterparties

whose affiliate utility markets are open to the formerly regulated Illinois utilities. Third (and alternatively), Strategic would commit to serve its retail load in Illinois with at least 65% of its power purchases from a counterparty whose affiliate utility markets are open to the formerly regulated Illinois utilities.

[redacted]

a. Strategic's Principal Source of Electricity is the Regional Transmission Organization.

i. Today's Illinois Electricity Market

The Illinois market today differs significantly from that which faced the General Assembly as it drafted the Electric Service Customer Choice and Rate Relief Law of 1997, which amended the Illinois Public Utilities Act (the "Act").

Since restructuring, two significant changes have fundamentally changed the Illinois electricity market. First, the two major utilities in the state (AmerenIP and ComEd) have divested themselves of their generation assets. Neither ComEd nor AmerenIP currently owns the generating units in its control area, and any "stranded" costs have been recovered, or will be recovered, through the imposition of Customer Transition Charges ("CTCs"). Therefore, as electric distribution companies, neither ComEd nor AmerenIP is impacted by which generating units are selected to serve load in their service area.

Second, since joining a Regional Transmission Organization ("RTO"), neither ComEd nor AmerenIP controls what generation resource is dispatched to meet the demand on its respective system. As described in detail below, in the ComEd service area, the PJM Interconnected Network ("PJM") now dictates which units run in order to meet demand at the lowest cost possible while ensuring reliability; likewise the Midwest Independent System Operator ("MISO") will dispatch generation in the AmerenIP service area. Each RTO sends its dispatch signal to generators without regard to the contractual obligations between Load Serving Entities ("LSEs") and their wholesale counterparties, regardless of whether the LSE is a utility or an ARES. Consequently, the

integration of the utilities into the RTOs has eliminated the concern that an ARES will take "unreasonable advantage of the investments made by the formerly regulated utilities." International Brotherhood of Electrical Workers v. Illinois Commerce Commission, 331 Ill. App. 3d 607, 772 N.E.2d 340, 265 Ill. Dec. 302 (5th Dist. 2002), cert denied, 201 Ill. 2d 572 (IL 2002).

Thus, as a result of utilities' divestiture of generating assets, the recovery of stranded asset investments through CTCs, and the move to RTOs, the Illinois electricity market provides a relatively level playing field upon which traditional electric utilities and ARES can compete. In light of the new competitive landscape in Illinois, many of the protections enacted by the General Assembly in the early days of restructuring are being phased out or have become obsolete. As each obstacle to competition is removed, so too the list of competitive suppliers in the state grows longer, enabling a more dynamic market for electricity and, in turn, providing greater savings and increased options for customers in Illinois.

a. Divestiture of Generation Assets and Recovery of Customer Transition Charges

Indeed, since 1997, the complexion of the Illinois electricity market has changed substantially. Both ComEd and AmerenIP have divested themselves of their generating assets to third parties or unregulated affiliates under provisions in the Act intended to safeguard the utilities' opportunity to earn a reasonable return on prior investments.[4] (See 220 ILCS 5/16-111(g) (governing utilities'

[4] See, e.g., *Central Illinois Light Co.*, Docket Nos.02-0140/02-0153 (consol.), 2002 Ill. PUC LEXIS 414, at *3, 35-36 (Ill. Commerce Comm'n, Apr. 10, 2002) (approving transfer of 96% of

reorganization and sale of assets with limited regulatory oversight).) The utilities in turn received the net present value of those assets. Significantly, by divesting themselves of their generating assets, the utilities relinquished financial as well as physical control of the generation component of their businesses, eliminating the possibility that any ARES can take undue advantage of the generation component of the utilities.

Nevertheless, to this day, ComEd and AmerenIP continue to receive the benefits of CTCs, "transition charges" that compensate utilities for the real and perceived costs associated with the move from a regulated environment to a competitive market. Utilities felt that as a result of the transition from a "regulated" electric market to a comparatively "deregulated" market, they were at risk of losing a revenue stream previously relied upon to recoup infrastructure expenditures. By instituting the CTC mechanism, which will remain in effect until 2007, the General Assembly enabled utilities that otherwise would have had "stranded" costs to ensure that capital investments made in energy infrastructure were repaid.

CILCO's generating capacity as of December 21,1997 to a wholly-owned, unregulated subsidiary); *Commonwealth Edison Co.*, Docket Nos. 00—369/00-0394 (consol.), 2000 Ill. PUC LEXIS 667, at *2, 65 (Ill. Commerce Comm'n, Aug. 17, 2000) (approving transfer of ComEd's nuclear plants, which constituted 52% of ComEd's generating capacity as of December 31, 1997, to an unregulated affiliate);*Central Illinois Public Service Co.*, Docket No. 99-0398, 1999 Ill. PUC LEXIS 766, at *2, 55 (Ill. Commerce Comm'n, Oct. 12, 1999) (approving transfer of 100% of CIPS generating capacity as of December 31, 1997 to an unregulated affiliate); *Illinois Power Co.*, Docket Nos. 99-0409/99-0410/99-0411 (consol.), 1999 Ill. PUC LEXIS 809, at *1, 110-111 (Ill. Commerce Comm'n, Oct. 26, 1999) (approving transfer of nuclear plant that comprised 20% of IP's generating capacity as of December 31, 1997); *Illinois Power Co.*, Docket No. 99-0209, 1999 Ill. PUC LEXIS 467, at *2, 59 (Ill. Commerce Comm'n, July 8, 1999) (approving transfer of fossil plants, which comprised 80% of Illinois Power's generating capacity as of December 31, 1997, to an unregulated affiliate).

In light of the measures taken – by both the utilities themselves and the General Assembly – to ensure that these utilities suffered no financial harm during the move from a regulated to an unregulated paradigm, it is no longer possible for an ARES to take unreasonable advantage of "the investments made by the formerly regulated utilities." International Brotherhood of Electrical Workers v. Illinois Commerce Commission, 331 Ill. App. 3d 607, 772 N.E.2d 340, 265 Ill. Dec. 302 (5th Dist. 2002), cert denied, 201 Ill. 2d 572 (IL 2002).

b. Com Ed and AmerenIP's Integration into RTOs

The Illinois electricity market has been further transformed as a result of the integration of Illinois utilities into RTOs. Following a utility's integration into an RTO, the previously vertically integrated utility no longer operates and manages its own transmission system, and no longer dispatches any generation. Rather, the RTO assumes responsibility for managing the flow of bulk electricity over the transmission system, and ensuring reliability. As the operation of and control over the transmission system has changed, so has the way in which Illinois market participants buy and sell energy and capacity. As a result, the development of RTOs in Illinois also significantly changes the analysis associated with the reciprocity provision.

Prior to joining PJM, ComEd operated its own transmission system, administering transmission service based on its FERC-approved Open Access Transmission Tariff ("OATT"). Similarly, ComEd also owned and operated its generating units and had discretion over which generating units would be dispatched so as to efficiently maximize its returns. Consequently, at that time,

the introduction of new suppliers into the Illinois market posed a potential threat to ComEd, insofar as those entities could theoretically reap profits while relying on the significant capital investments ComEd and other entities had made in Illinois' energy infrastructure. The General Assembly addressed these perceived threats to Illinois utilities, in part by allowing the collection of CTCs and in part by including the reciprocity provision in the Act. Significantly, the realities that bore the reciprocity provision in the Act no longer exist today.

ii. RTOs manage Transmission Service for and Dispatch the Generation that was Formerly Owned by Com Ed and Ameren IP

The RTO is designed to centrally manage both transmission service and security constrained economic dispatch. That is to say, the RTO simultaneously schedules the movement of energy over the transmission system and dispatches the generation necessary to meet demand. Centralizing both functions maintains reliability of the transmission system while decreasing the likelihood of Transmission Load Relief ("TLR") curtailments and increasing efficiency.[5]

By engaging in security constrained economic dispatch, the RTO coordinates the buying, selling, and delivery of wholesale electricity through its energy market. The RTO continuously matches supply and demand, while

[5] TLR curtailment, though necessary and performed in accordance with North American Electricity Reliability Council ("NERC") guidelines, is an administrative restriction that is operationally and economically inefficient. If the responsibility for transmission reliability remained with individual transmission providers, in order to avoid TLR curtailment each provider is likely to be overly conservative in granting transmission service; in turn, this could lead to an underutilization of the transmission system. Furthermore, TLR curtailment does not contemplate the economics of interrupting a transaction. By providing a combination of transmission service and security constrained economic dispatch, the RTO oversees a "total service" at a transparent price that allows market participants to decide if it is economically advantageous to continue any particular transaction.

maintaining the integrity of the transmission system. In order to do this, the energy market uses Locational Marginal Pricing ("LMP"). LMP pricing is primarily a mechanism for using market prices, rather than TLR to manage congestion and determine prices that are consistent with the system operator's re-dispatch.[6]

LMP pricing helps maintain system reliability by providing generators with financial incentives to respond to the real-time dispatch instructions. LMP pricing is market-based (prices are determined by the bids and offers of market participants), and reflects the value of the energy at the specific location and time it is delivered. Market participants purchase energy at the LMP price at the point of withdrawal and sell energy at the LMP price at the point of injection.

Load Serving Entities within RTOs like the PJM and MISO operate under the LMP paradigm. Specifically, the RTO recognizes an LSE's load obligation based on meter reads submitted by assigned meter reader(s). The RTO then charges the LSE the hourly price for energy, ancillary services, and other RTO charges, at the load's location (node or zone). The hourly cost is based on whether the LSE entered an hourly, Day-Ahead "demand bid" or is serving via the real time market. To economically serve the load, the LSE will typically purchase generation within the same zone, or enter into a power contract with a delivery point very close to the withdrawal location, since the LSE is paid the same hourly price by PJM for its "injection" as it pays for load withdrawal. In other words, if the LSE's load is located in the ComEd service area (referred to

[6] When transmission congestion exists, energy cannot flow freely to certain locations. Because the lowest-priced electricity cannot reach all delivery points, more expensive electricity is dispatched to meet the demand in the constrained area. The LMP price is the bid-based cost of

as Northern Illinois Control Area ("NICA") zone in PJM), it is likely that the LSE will bilaterally purchase power within the NICA zone. If the LSE chooses to serve its load in the real-time market, the LSE, by default, purchases power at the load zone.

Ultimately this means that the RTO will dispatch the necessary generation without regard for the activities of LSEs. By engaging in a transaction solely with the reliability of the grid as its goal, the RTO ensures that supply meets demand, and leaves financial settlement with those parties who have supplied or withdrawn energy.

Due to the nature of security constrained economic dispatch and the LMP market and regardless of the utility or ARES involved, Illinois delivery services and bundled service customers likely will be served by the same generating units that have historically provided them power. In short, regardless of the circumstances, neither utilities nor ARES can determine what generation is dispatched to serve Illinois customers; however, given the realities of the way in which the RTOs operate, the generation that is dispatched most often is the generation that formerly was owned by the Illinois utilities.

a. ComEd's Integration into PJM

ComEd became fully integrated into the PJM ISO on May 1, 2004. (See Exhibit 2 (ComEd Integration Order).) PJM is the reliability coordinator for the largest centrally dispatched control area in North America. As the reliability coordinator, PJM manages the movement of electricity in all or parts of

---

re-dispatching the system at the least cost to supply energy to the next increment of load at a

Delaware, Illinois, Maryland, New Jersey, Ohio, Pennsylvania, West Virginia, and the District of Columbia. The PJM footprint contains generating capacity of 76,000 megawatts, and 63,762 megawatts of peak load. With approximately 446 million mega-watt hours of annual energy deliveries, PJM operates the largest competitive wholesale electricity market in the world. The PJM energy market uses the LMP model described above, to ensure reliability and the efficient movement of power.

As discussed above, ComEd divested its generating units, selling its coal burning units and transferring ownership of its nuclear units to Exelon Generation, ("ExGen") a subsidiary of Exelon Corporation, a registered public utility holding company and the parent company of ComEd and Philadelphia Electric Company ("PECO"). ComEd and PECO, as utility affiliates of ExGen, provide delivery services in Northern Illinois and Southeastern Pennsylvania, respectively.

b. AmerenIP's Integration into MISO

As a result of AmerenIP officially joining the Midwest Independent System Operator ("MISO") on September 30, 2004, Ameren Corporation now has all of its transmission assets under the MISO RTO. (See Exhibit 3 (AmerenIP Joins MISO).) MISO, like PJM, assumes full functional control of its member's transmission lines, and provides non-discriminatory, open access to electricity, and serves as the regional hub for the flow of electricity in the 15 states and one Canadian province of its members. MISO is responsible for administering its region-wide tariff, maintaining the MISO Open Access Same-time Information

---

specific point on the grid.

System ("OASIS") website, providing region-wide market monitoring services, managing parallel path flows for the region, maintaining operational authority, monitoring critical facilities within the MISO region, and developing and implementing market-based congestion management measures.

MISO will implement its FERC approved Transmission and Energy Markets Tariff on March 1, 2005, beginning what is known as Day 2. (See Exhibits 4 & 5 (FERC Approval of MISO TEMT and MISO Energy Markets Tariff).) As of Day 2, MISO will coordinate transmission access and security constrained economic dispatch. Like PJM, the MISO energy market will use LMP to manage transmission congestion. As an LSE in the MISO footprint, Strategic will schedule its energy deliveries with the MISO on a daily basis. (See Exhibit 6 (Strategic Energy MISO Agreements).) Those scheduled transactions will clear at the hourly price for each point of injection or withdrawal.

RTOs in Illinois provide a larger and more easily accessible transmission system within which incumbent Illinois utilities or their corporate affiliates may compete. MISO and PJM are currently moving toward creating a joint and common energy market covering both regions. This joint market will provide non-discriminatory access to market participants using the MISO and PJM transmission systems. MISO and PJM will administer the market using processes outlined in the MISO and PJM Joint Operating Agreement. (See Exhibit 7 (Joint Operating Agreement).) To create this contiguous energy market, PJM and MISO are addressing how to manage congestion between the regions. (See Exhibit 8 (Congestion Management Process).) The RTO's are also working

to eliminate the "through and out" rates that currently make many intra- and inter-RTO transactions uneconomic. The RTO's ultimately expect to operate as a single energy market, managing the Real-Time and Day-Ahead markets, as well as handling administrative and operational functions such as planning, scheduling, settlements, and billing. The ultimate goal is to provide market participants with "one-stop shopping." The joint and common PJM-MISO market will provide Illinois market participants – including ARES, incumbent utilities, and their affiliates – with enhanced access to a broader and more diverse energy market.

Strategic is a certified PJM market participant, and if certified as an ARES in the ComEd service territory, would operate as such under the PJM Reliability Assurance Agreement Among Load Serving Entities. (See Strategic Exhibit 9 & 10 (Strategic Energy PJM Agreements and PJM LSE Documents).) This means that as an LSE operating within the ComEd service territory, Strategic would obtain 100% of its customers' energy needs from PJM. Strategic would purchase energy at the zonal LMP to meet its customers' demand, and the Illinois utilities or their affiliates will be selling into that market.

Furthermore, by purchasing energy from PJM to serve end-use customers, Strategic would in fact be purchasing at least 65% of its electricity from Exelon Generation ("ExGen") because ExGen provides more than 65% of the electric power and energy in the NICA market. (See Commonwealth Edison, *Environmental Disclosure Statement*, July 1, 2004, *available at* http://www.icc.state.il.us/rl/library.aspx?key=Environmental%20Disclosure.)

ExGen, as Strategic's principle source of electricity, would, through its affiliation with ComEd and PECO fulfill the reciprocity requirement, because both Illinois and Pennsylvania have open and active competitive retail markets, (See Exhibits 11, 12, & 13. (Pennsylvania Restructuring Statute, ComEd Supplier Tariff and PECO EGS Tariff).)

By purchasing power from PJM to serve end-use customers in the ComEd territory, Strategic is in fact utilizing ExGen as its principle source of electricity. ExGen, by way of PJM, will supply electricity to Strategic using generation assets that were formerly owned by ComEd. Additionally, the transmission and distribution assets of ComEd will be used to deliver the ExGen electricity to Strategic's customers. ComEd will receive payments for the use of its distribution and transmission assets through delivery services charges, and ExGen, which now owns the generating assets previously owned by ComEd, will be compensated for use of those assets. Therefore, as a new entrant to the Illinois market, Strategic would in no way inhibit the ability of the utility or its affiliate to obtain a return on its investments.

Similarly, for Strategic's customers in AmerenIP's territory, Strategic would purchase energy at the point from which it is withdrawn to serve its customers, making MISO Strategic's principle source of electricity to serve customers in the AmerenIP service territory. Given the nature of security constrained economic dispatch, Strategic customers in the AmerenIP service area would continue to be served by the same generating units that have historically served them.

By purchasing power from MISO to serve end-use customers in the AmerenIP territory, Strategic in fact will be utilizing generation resources formerly owned by the incumbent utility as its principle source of electricity. As is the case in ComEd's service territory, the transmission and distribution assets now owned by the utility, but to be operated by the RTO, will be used to deliver electricity to Strategic's customers. AmerenIP will receive payment for the use of its distribution and transmission assets through delivery services charges, and the corporate affiliate which now owns the generating assets previously owned by AmerenIP will be compensated for use of those assets. Therefore, as a new entrant Strategic would promote the ability of the utility or its affiliate to obtain a return on its investments.

c. Delivery Services

Strategic's principal source of electricity, PJM and MISO clearly provide delivery services to ComEd and AmerenIP that are reasonably comparable to those offered by the ComEd and Ameren IP. Arguably, they are identical.

In Section 16-102 The General Assembly defined Delivery Services based on the market structure it saw at the time it amended the Act in 1997.

> "Delivery services" means those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

However, since the Act was drafted there have been a number of significant changes to the market structure, some of which had been discussed earlier in this analysis. Neither ComEd nor Ameren, after integrating with PJM and MISO

respectively, provide both transmission and distribution services. Control of the transmission systems in the ComEd and Ameren service territories has been transferred to PJM and MISO. Wholesale market participants contract for transmission service, forecast supply and load, schedule injections and withdrawals, and settle financially all with the RTO. In fact, individual end-use customers can also function as wholesale market participants, forecasting and scheduling their energy and capacity needs and then settling financially directly with the RTO. In the instance where an end-use customer bypasses the electric distribution company, the RTO is the sole supplier of delivery services.[7] By delivering electricity to customers, for which it meters and bills, the RTO is a provider of Delivery Services.

Consequently, by virtue of the integration of the incumbent utilities into PJM and MISO, and the fact that the utilities' affiliates and Strategic participate in PJM and MISO, PJM and MISO are Strategic's principal source of electricity. Thus, Strategic satisfies the reciprocity provision.

2. Strategic Energy would purchase 65% of its power from Illinois or from markets that are open to ComEd, AmerenIP or their affiliates

In addition to meeting the reciprocity requirement through PJM and MISO, if necessary, Strategic could satisfy the reciprocity requirement by ensuring that at least 65% of its bilateral wholesale power contracts executed to serve Illinois retail customers will come from a single pool of counterparties that own and

[7] See, Occidental Services, Inc. v. PJM Interconnection, LLC, Docket No. EL03-42-000 (FERC June 5, 2003 Order) (granting Occidental Petroleum the ability to operate as a wholesale market participant under the PJM tariff, scheduling and taking delivery at a specific bus).

control transmission and distribution systems to which power and energy is physically and economically deliverable by ComEd, AmerenIP, or their affiliates. (See Confidential Exhibit 14 Strategic Energy Wholesale Counterparties.) Strategic currently purchases power from several counterparties that meet this description, and, if necessary, is willing to commit that it will continue to do so in order to comply with the reciprocity requirement.

Using the wholesale procurement strategy described above, Strategic would not be taking unreasonable advantage of the investments made by incumbent utilities in Illinois, as Strategic's principal source of electricity provides reciprocal access to incumbent Illinois utilities. Equally as important, Strategic will still be able to deliver more value to Illinois consumers by using both its pool of counterparties.

Both of the utilities in whose service territory Strategic is seeking to operate have retail marketing affiliates. In fact, these marketing affiliates are certified to supply retail customers in two retail access states identified in Exhibit 14. Both AmerenEnergy Marketing and Exelon Energy Services are licensed by the Ohio Public Utilities Commission as Competitive Retail Electric Suppliers, and are permitted to sell retail electric generation in Ohio. (See Exhibits 15 & 16 (Ameren CRES Certification and Exelon CRES Certification).) The Michigan Public Service Commission also licenses Exelon Energy Services as an Alternative Electric Supplier. (See Exhibit 17 (Unicom AES Certification).) Both AmerenIP and ComEd, through their affiliate marketing entities, have reciprocal access to provide retail electric service to end-use customers in the utility service

territories identified in the list of Strategic Energy's wholesale counterparties. Each of the electric utilities identified in the matrix abides by the applicable State restructuring statute, as well as its State Commission approved supplier tariff. (See Exhibit 18 & 19 (State restructuring statutes and Competitive Supplier Tariffs).)

If necessary, Strategic is willing to commit that it will purchase at least 65% of its supply from companies identified in the attached confidential list of Strategic Energy's wholesale counterparties. As a result, Strategic satisfies the reciprocity provision in the Act.

3. Strategic Energy would purchase 65% of its power from one of the companies in Strategic's Confidential Exhibit 14

Strategic is familiar with the Commission's recent Order on Rehearing in the Application of Nordic Marketing of Illinois for a Certificate of Service Authority in which the Commission granted Nordic a service authority to operate as an Ares. Docket No. 04-0334 (Oct. 6, 2004 Order). The Commission directed Nordic that in complying with Section 16-115(d)(5), "a single source" shall be used to supply at least 65% of [Nordic's] purchased power and energy and shall constitute its "principal source of electricity." The Commission went on to state that Nordic is not allowed to use multiple sources to reach this 65% level. Order at 5. Although the Act states that an ARES's principal source of electricity should be a "single source", nothing in the Act should be read to restrict an ARES to purchase 65% of its electricity from just one wholesale counterparty. To the contrary, the Act embraces the concept that a power marketer may be

certificated, even if its principal source of electricity is not known at the time the application is filed.

In order to manage risk and maximize profitability, a wholesale counterparty will attempt to meet its wholesale supply obligations in the most economic manner, be it self-supply, third party arrangements, or spot market purchases. In requiring an ARES to rely on a single counterparty as its principal source of electricity, the Commission overlooks the fact that a supplier's principal counterparty may utilize a number of supply options, including purchasing from other suppliers. An ARES might arrange for supply from its principal counterparty, which in turn identifies the most economic supply option to be purchasing from a third party. The ARES would then pay the third party supply cost plus what amounts to a transaction fee to its principle counterparty. The principle counterparty, in essence, becomes a middleman or a "sleeve" through which an ARES obtains its supply. It is hard to comprehend how these additional, unnecessary financial transactions serve to protect the incumbent utilities from being taken advantage of, or how this in any way furthers competition. In fact, requiring a middleman to facilitate these supply transactions only serves to limit an ARES's ability to obtain low cost firm power and capacity.

Requiring Strategic to purchase 65% of its power from **one** wholesale counterparty would impose a restriction on Strategic beyond those contained in the statute. More importantly, it would undermine the competitive goals of the Act and limit ARES' ability to bring better pricing to customers in Illinois. Additionally, such an interpretation would not necessarily provide existing utilities

with an opportunity to obtain a return on capital investments but would disproportionately benefit one utility. (See WPS, 331 Ill. App. 3d at 617 (in providing guidance on how to interpret this ambiguous statute, the Illinois appellate court relied on the legislative concern for providing existing utilities with an opportunity to obtain a return on certain investments).)

Although Strategic primarily seeks certification based on the fact that its principal source of electricity is PJM for ComEd and MISO for AmerenIP, should the Commission deny Strategic's application on this basis, Strategic requests that the Commission grant it a certificate on the basis that Strategic agrees to purchase 65% of its electricity for Illinois from Illinois or from markets that are open to ComEd, AmerenIP or their affiliates.

As a last resort and only in the event the Commission denies Strategic's application for certification on these two bases, Strategic seeks certification on the basis that it would agree to supply at least 65% of its purchased power from Illinois from one of the sources on Confidential Exhibit 14.

4. Strategic will remain in compliance

Strategic certifies that it complies with Section 16-115(d)(5) of the Act [220 ILCS 5/16-115(d)(5)], and that it will remain in compliance with such requirements and will annually certify such compliance to the Commission during January of each year after its certification.

IV. Conclusion

For all of the foregoing reasons, Strategic Energy certifies that it satisfies the reciprocity requirement set forth in Section 16-115(d)(5) of the Act.

VERIFICATION

I, Patrick J. Purdy, as COO of Strategic Energy, LLC, hereby affirm that I have knowledge of the contents of this document and it is true and accurate to the best of my knowledge.

Patrick J. Purdy

SUBSCRIBED AND SWORN TO BEFORE ME this 10th day of February, 2005

Notary Public

My Commission expires:

SEAL:

Notarial Seal
Mary E. Kovacic, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Nov. 7, 2005
Member, Pennsylvania Association Of Notaries